

Indiana Department of Environmental Management

Office of Water Management

Rule Fact Sheet

January 12, 2000

Amendments to Great Lakes System Dischargers Interim Antidegradation Implementation Procedures for Outstanding State Resource Waters

#99-111 (WPCB)

Overview

The Indiana Department of Environmental Management (IDEM) had developed draft rule language for amendments to Great Lakes System Dischargers Interim Antidegradation Implementation Procedures for Outstanding State Resource Waters (OSRWs).

Citations Affected

Amends 327 IAC 5-2-11.7

Affected Persons

Entities seeking new, renewed, or modified National Pollution Discharge Elimination System (NPDES) permits to discharge to OSRWs within the Great Lakes system.

Reason(s) for the Rule

This rulemaking is being proposed to amend 327 IAC 5-2-11.7 to increase certain public participation requirements and to clarify essential implementation language.

Economic Impact of the Rule

The economic impact of the proposed amendments on entities regulated by 327 IAC 5-2-11.7 will be minimal. For the exceptions that would require increased public participation, there may be a small cost associated with preparing for and attending a public meeting. The clarifications to implementation

language will not result in an increased cost to regulated entities.

There will be an increased administrative cost to IDEM to schedule and hold public meetings on the exceptions in the rule. However, the clarification to implementation language will streamline the permitting process, and decrease administrative costs.

Benefits of the Rule

The proposed amendments are intended to have the benefit of increasing public participation opportunities or of clarifying implementation language to streamline the permitting process.

Description of the Rulemaking Project

327 IAC 5-2-11.7 establishes antidegradation implementation procedures for discharges to OSRWs in the Great Lakes system. Indiana is required by the federal Water Quality Guidance for the Great Lakes System (40 CFR Part 132) to have antidegradation implementation procedures for discharges of bioaccumulative chemicals of concern to all state waters in the Great Lakes system.

IDEM is proposing to make several amendments to 327 IAC 5-2-11.7 to increase the public participation requirements and level of review for some of the exceptions to performing an antidegradation demonstration. These changes include:

Moving outright exception concerning pollutants in intake water to the category of exceptions allowed after public notice and opportunity to comment and a demonstration by the discharger that the increased discharge is necessary.

Deleting the outright exception concerning noncontact cooling water discharges and adding a new provision concerning insignificant heat increases.

Eliminating the exceptions for storm water run-off associated with construction and industrial activities. Pursuant to 327 IAC 15-2-6, general permits for these activities are not allowed for discharges directly to OSRWs, and the exception in 327 IAC 5-2-11.3 will still apply to discharges to tributaries of OSRWs.

Creating a new category of exceptions requiring public notice and opportunity to comment and a demonstration by the discharger that the discharge will result in a net environmental improvement. Exceptions in the category will include overall decreases in the loading of a particular pollutant in a water body, overall decreases in the toxicity and bioaccumulative nature of pollutants in a water body, and increased discharges of water pollutants that allow for greater reductions in releases of air pollutants.

Mandating public meetings concerning applications for all exceptions requiring public notice and opportunity to comment.

Additionally, IDEM intends to clarify certain implementation language and streamline the rule section by eliminating redundancies. These changes include:

Revising the rule section to reference the OSRW antidegradation standard in 327 IAC 2-1.5-4(c).

For existing permitted discharges, clarifying that an increase above the existing NPDES permit limitation is the factor for determining whether a new or increased discharge of a pollutant or pollutant parameter directly to an OSRW triggers review under this rule section.

Clarifying that this section only applies to discharges directly to OSRWs, except that subsection (a)(2) of the rule applies to discharges to tributaries.

Deleting redundant language and revising existing language to improve the readability of the section.

Scheduled Hearings

First Public Hearing: January 12, 2000, 1:30 p.m., Indiana Government Conference Center Rooms 4 and 5, 402 West Washington Street, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The amended rules are consistent with federal Great Lakes system water quality standards and implementation procedures.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Kari Simonelic, Rules Section, Office of Water Management, (317) 233-8903 or (800) 451-6027 (in Indiana).